

IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JODHPUR

J U D G M E N T

S.B. WRIT PETITION NO.68/2004
(Lachhi Ram Vs. Nen Mal & Ors.)

Date of order : April 27th, 2007

P R E S E N T

HON'BLE MR. JUSTICE GOPAL KRISHAN VYAS

Mr. C.S. Kotwani, for the petitioner.
Mr. Kailash Trivedi, for the respondents.

BY THE COURT :

By way of filing the present writ petition, the petitioner has challenged the impugned judgment dated 25.5.1995 (Annexure-1) passed by Civil Judge, (Senior Division), Bali in DRC Original Case No.6/85 as well as the judgment dated 4.9.2003 passed by District & Sessions Judge, Pali in DRC Revision Petition No.1/95 and prayed that both the judgment may be quashed and set aside.

According to the facts narrated in the writ petition, the respondent No.1 filed an application

under Section 6 of the Rajasthan Relief of Agricultural Indebtedness Act, 1957 (hereafter as "the Act of 1957" only) wherein it was stated that the petitioner-non-applicant took a loan of Rs.13,000/- from the respondent No.1 on 14.12.1975 on a promissory note with the condition to pay interest on it. It was further averred in the application that on 26.12.1976, a sum of Rs.1560/- was paid to the respondent No.1 in lieu of the interest and thereafter, no amount was paid by the petitioner to the respondent No.1. He prayed for allowing the application and decreed the amount of Rs.17,680/- in his favour.

By way of filing the reply to the application filed under Section 6 of the Act of 1957, the petitioner denied all the allegations and it was specifically stated in reply that no amount was ever taken on 14.9.1975 or on any other date. The signature upon the promissory note was also denied and it was contended that said promissory note is fake and forged one. However, the Civil Judge, Senior Division, Bali, in pursuance of the pleadings, framed nine issues and thereafter evidence was produced by both the sides and at last the learned trial Court decided all the issues against the petitioner and decided the application in favour of the respondent No.1 and ordered to pay a sum of Rs.13,000/- in twelve equal installments with 6% annual interest.

The said judgment was challenged by way of filing a revision petition under Section 17 of the Act of 1957. The learned revisional court has also dismissed the revision and upheld the judgment passed by learned trial court.

Learned counsel for the petitioner vehemently argued that both the judgments passed by trial court as well as revisional court are without jurisdiction and against the principles of natural justice and has been passed in flagrant violation of law. It was further contended that the learned trial court has failed to appreciate the evidence led by the petitioner inasmuch as when the petitioner has specifically denied the signature upon the promissory note and he has produced the hand writing expert for his support and the hand writing expert has specifically stated in the statement that the promissory note has not been signed by the petitioner and in that event, the learned trial court has erred in law while allowing the application filed by the respondent No.1. Similarly, the revisional court has also committed an error while upholding the judgment passed by learned trial court. It was further argued that both the courts below have failed to appreciate the fact that the family of the respondent No.1 carries on the business of money lending without any licence. Therefore, both the judgments delivered by the learned trial court as well as the revisional

courts deserve to set aside.

Learned counsel for the respondents vehemently opposed the prayer and contended that the learned trial court has rightly appreciated the evidence produced before it by both the parties and rightly decreed the suit and with regard to the appreciation of the evidence by the learned trial court and the revisional court it is argued that the petitioners contention cannot be accepted because by way of discussing the entire facts and evidence on record and while taking into account the law of evidence, the learned trial court has rightly allowed the application filed by the respondent No.1. It is also argued that the learned trial court has rightly considered the evidence and rightly held that there is no reason to disbelieve the evidence of AW-1 and AW-3. Hence no interference is required in the matter.

I have heard learned counsel for the parties and perused both the judgments passed by courts below.

The learned trial court while passing the order dated 25.5.1995 has held that although there is two different expert opinion on record but only on that basis, it cannot be said that claim of the plaintiff-respondent No.1 is false. Other facts and circumstances as well as the evidence which has come on record, are also required to be considered.

Learned trial court has relied upon the statement of witness Jawan Mal, who has written the document and he has specifically stated before the trial court that petitioner took loan of Rs.13,000/- from Lachhi Ram. He has also stated that he has executed the promissory note - Ex.1 while affixing a stamp and giving receipt. Learned trial court has also further considered the statement of PW-1 Himmat Singh, who has put his evidence as witness upon the promissory note. He has stated before the Court that at the time of preparing promissory note, he was present and he has put his signature and all the transactions were made before him. Learned trial court has rightly relied upon the evidence of both the witnesses and considered the other material and oral evidence. Therefore, the document upon which the application was made by the respondent No.1 was found to be correct by the learned trial court and issues were decided in his favour.

Learned counsel for the respondent has invited the attention of this Court toward the judgment of this Court in case of Modilal & Anr. Vs. L.Rs. Of Chatra Ram & Ors., reported in 2003 (2) WLC (Raj.) 715 wherein the Coordinate Bench of this Court has held that the Additional District Judge is fully competent to hear and decide the revision under Section 17 of the Act of 1957. It was further held that in the suitable case the findings of facts recorded by the Debt Relief Court can be interfered

with by the District Court while exercising revisional jurisdiction under Section 17 of the Act of 1957

In para 26 of the aforesaid judgment, the learned Single Judge has held as follows:-

“26. The power of general superintendence conferred by Article 227 involves a duty on the part of the High Court to keep all courts and tribunals within its territorial jurisdiction within the bounds of their authority, to see that they do what their duty requires and they do it in a legal manner. This means that the High Court can interfere in cases of -

- (a) Erroneous assumption or excess of jurisdiction.
- (b) Refusal to exercise jurisdiction.
- (c) Error of law apparent on the face of the record, s distinguished from a mere mistake of law or error of law relating to jurisdiction.
- (d) Violation of principles of natural justice.
- (e) Arbitrary or capricious exercise of authority, or discretion.
- (f) Arriving at a finding which is perverse or based on no material.

In the facts and circumstances, all the above points are missing in the present case. The respondent No.1 has proved its case and the learned trial court as well as revisional court has rightly decreed the amount against the petitioner.

In these circumstances, I see to reason to

interfere in both the judgments passed by courts below while exercising the power under Article 227 of the Constitution. The petition is dismissed. No order as to costs.

(GOPAL KRISHAN VYAS), J.

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